HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MS JUSTICE G. ROHINI

WRIT PETITION No:25212 OF 2007

Dated:28.11.2007

Between:

M/s. Gianey's Jewellers
No.5-8-612/1, Abids,
Hyderabad rep.,
by Smt. Rajani S. Gaini

..Petitioner

And

1. The Joint Commissioner (CT) (Legal),
   Office of the Commissioner of
   Commercial Taxes, Nampally
   Station Road, Opposite Gandhi Bhavan,
   Hyderabad and others.

..Respondents.

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HONOURABLE MRS. JUSTICE T.MEENA KUMARI
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ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

The present writ petition is filed by the petitioner seeking to declare the order dated 11.9.2007 passed by the 1st respondent in CCT's Ref.LV(1)/646/2007 for the assessment year 2002-2003 (APGST) as illegal and arbitrary.

The main grievance of the petitioner is that the appeal preferred by it as to assessment order dated 4.3.2006 was dismissed by the 2nd respondent on the ground of non-payment of 12.5% of the disputed tax and hence, the petitioner carried the matter in further appeal to the Sales Tax Appellate Tribunal. The petitioner has also filed an application before the 1st respondent seeking stay of recovery of disputed tax pending the appeal before the sales Tax Appellate Tribunal and the said application was rejected. Hence, the present writ petition is filed by the petitioner.

Heard the learned Counsel appearing for the petitioner and the learned Government Pleader for Commercial Tax and perused the material available on record.

It is the contention of the learned Counsel for the petitioner that subsequent to the dismissal of the appeal by the 2nd respondent on the ground of non-payment of 12.5% of the disputed tax, the petitioner had complied with the statutory payment of 12.5% of the disputed tax and

therefore, rejection of stay application by the 1st respondent is illegal and unjustified and that at this juncture, if the relief as to the stay of the proceedings is not entertained and if the recovery of the disputed tax in question is effected during the pendency of the appeal before the Sales Tax Appellate Tribunal, the very purpose of filing the said appeal, which is a statutory remedy that is available to the aggrieved party, would be defeated.

In the facts and circumstances of the case and in view of the pendency of the appeal before the Sales Tax Appellate Tribunal, without expressing any opinion on the merits of the case, We feel it a fit case wherein stay can be granted, but subject to imposition of certain conditions. Accordingly, there shall be stay of recovery of disputed tax till the disposal of the appeal pending before the Sales Tax Appellate Tribunal subject to the condition of the petitioner depositing 50% of the disputed tax within a period of six weeks from today. However, it is made clear that the amount paid if any, shall be given credit to the above stipulated sum.

Subject to the above direction, the writ petition is disposed of. No order as to costs.

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Justice T. Meena Kumari

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Justice G. Rohini

Date: 28th November, 2007
Note:
Issue CC in two days
(BO)
Nn.

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(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

28/11/2007